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insured's life and thus create a conditional right in the assignee to the payment of the insurance money. It must appear that the insurance contract was made in good faith and not merely to circumvent the requirement of insurable interest. For a discussion of the relevant decisions, some of which retarded the crystallization of the now well recognized rule, see (1915) 24 YALE LAW JOURNAL, 433; (1911) 21 *ibid.*, 168, 422; see also (1918) 27 *ibid.*, 1083; and a leading *contra* case, *Russell v. Grigsby* (1909, C. C. A. 6th) 168 Fed. 577, approved (1909) 23 HARV. L. REV. 65, and repudiated by the Supreme Court in *Grigsby v. Russell* (1911) 222 U. S. 149, 32 Sup. Ct. 58, which adopted the view of the principal case.

MONOPOLIES—SHERMAN ACT—IMPOSING RESALE PRICES BY CONTRACT WITH CUSTOMERS UNLAWFUL.—An indictment under the Sherman Act alleged that the defendant corporation manufactured under letters patent valves and other accessories which it sold to manufacturers and jobbers in automobile tires under uniform contracts that they should resell at fixed prices, thereby suppressing competition. The lower court sustained a demurrer. *Held*, that this ruling was erroneous. *United States v. Schrader's Son, Inc.* (March 1, 1920) U. S. Sup. Ct. Oct. Term 1919, No. 567.

In sustaining the demurrer the lower court relied upon a recent Supreme Court decision. *United States v. Colgate & Co.* (1919) 250 U. S. 300, 39 Sup. Ct. 465. It thought this case modified the doctrine of *Dr. Miles Medical Co. v. Park & Sons Co.* (1911) 220 U. S. 373, 31 Sup. Ct. 376. The opinion of Mr. Justice Brandeis repudiates the suggestion that there is no inconsistency between the two cases, and reaffirms the distinction, taken in the Colgate case, between exercising one's *privilege* of refusing to sell to customers who are unwilling to maintain resale prices and attempting by contract to obtain a *right* that one's customers shall maintain such prices. The former is lawful; the latter forbidden by the Sherman Act. See (1919) 28 YALE LAW JOURNAL, 505; (1920) 29 *ibid.*, 365. And see Brown, *The Right to Refuse to Sell* (1916) 25 *ibid.*, 194.

PROPERTY—PROFITS A PRENDRE—PRIVILEGE OF TAKING AND SELLING SPRING WATER.—In 1909 the New York legislature created a board of commissioners of the state reservation at Saratoga Springs empowering it to grant concessions and leases of any portion of the same upon terms to be fixed by it. Thereafter this board executed an instrument in writing with four individuals, granting them for a period, which with renewals would total twenty-five years, the privilege of bottling and selling the water from the Saratoga Springs under certain conditions and preserving to the public free access to the reservation and free use of the waters there for drinking or bathing. The plaintiff corporation was organized to take the place of the four individuals named. Thereafter the legislature transferred the powers of the board to the conservation commission which prevented plaintiff from exercising the privileges granted. He sued for an injunction and damages. *Held*, the plaintiff should have the relief sought. Crane, J., *dissenting*. *Saratoga State Waters Corporation v. Pratt* (1920, N. Y.) 125 N. E. 834.

The decision, which involves a holding that the privilege granted of taking and selling spring water was a *profit a prendre*, seems unquestionable. See COMMENT (1919) 29 YALE LAW JOURNAL, 218. So also does the holding that the defendant is not protected by a later act of the legislature and is to be treated as a private wrongdoer. The court below had held that injunction would not lie against a state officer acting pursuant to a statute. (1918) 184 App. Div. 561, 172 N. Y. Supp. 40. The writer of the opinion, however, attempts definitions of various terms, such as easements and profits, which are so lacking in careful analysis that they may well involve trouble for the court here-

after. The court also suggests that easements in gross are in many places held unassignable, indicating a lack of acquaintance with the New York authorities similar to that of the Appellate Division in *Matthews Slate Co. v. Advance Industrial Supply Co.* (1918) 185 App. Div. 74, 172 N. Y. Supp. 830; (1919) 29 YALE LAW JOURNAL, 218, 219.

SALES—WARRANTY—RUNNING WITH PERSONALTY.—The defendant traded a stallion to the plaintiff, representing that it was sound. The plaintiff traded it to W, making a similar representation. The stallion was in fact wind broken and W sued the plaintiff who notified the defendant to appear, which he failed to do. The plaintiff sued the defendant for the amount of the judgment which he paid W. The jury found that the stallion was sound when delivered by the defendant to the plaintiff. *Held*, that the plaintiff should not recover. *Booth v. Scheer* (1919, Kan.) 185 Pac. 898.

The finding of the jury rendered unnecessary the long discussion whether a warranty "runs with personality." The accepted rule is that it does not. *Smith v. Williams* (1903) 117 Ga. 782, 45 S. E. 394. Except where there is an assignment of the right against the warrantor. *Cf. Bordwell v. Collie* (1871) 45 N. Y. 494; see Williston, *Sales* (1909) sec. 244. Or by trade custom, as in the case of a tobacco sampler's warranty. *Conestoga Cigar Co. v. Finke* (1891) 144 Pa. 159, 22 Atl. 868. Other seeming exceptions really "sound in tort." See COMMENT (1918) 27 YALE LAW JOURNAL, 1068.

TELEGRAPHS AND TELEPHONES—REGULATION MAKING COMPANY'S MESSENGER AGENT OF SENDER REASONABLE.—The plaintiff sued to recover damages caused by the defendant's failure to transmit and deliver a telegram addressed to him by A. The message was given by the sender to a messenger but was never delivered at the defendant's transmitting office. The company pleaded in defence the stipulation on the telegraph blank, a part of the contract, that "no responsibility attaches to this company concerning telegrams until same are accepted at one of its transmitting offices, and if the telegram is sent to such office by one of the company's messengers, he acts for that purpose as agent of the sender." *Held*, that recovery must be denied, the provision being reasonable and hence binding. *Collotta v. Western Union* (1920, Miss.) 83 So. 401.

The court followed the few cases which have decided this precise question. *Ayres v. Western Union* (1901) 65 App. Div. 149, 72 N. Y. Supp. 634; *Stamey v. Western Union* (1894) 92 Ga. 613, 18 S. E. 1008. For the effect of the company's limitation as to the amount of damages it will be under a duty to pay in case of nondelivery or error in an unrepeatable message, see (1920) 29 YALE LAW JOURNAL, 573.

TORTS—NEGLIGENCE—LAST CLEAR CHANCE.—The decedent, a "licensee," while walking on the tracks of the defendant railroad, was struck and killed by a train. The engineer gave no signal of danger, and the inference was that he saw the decedent but expected her to get off the tracks. Her administrator sued for wrongful death. *Held*, that recovery should be allowed because the defendant had the last clear chance to avoid the injury. *Gunter's Adm'r v. Southern Ry.* (1920, Va.) 101 S. E. 885.

The opinion would seem to be somewhat confused in its application of the doctrine of last clear chance. See COMMENT (1915) 24 YALE LAW JOURNAL, 330; (1920) 29 *ibid.*, 542. However the decision can be explained by the fact that the defendant was under a duty to give some warning to those privileged to walk on its tracks, and that, therefore, the decedent was not negligent in relying upon performance of this duty.